

REMARKS

Applicant has considered all points made by the Examiner in the Office Action and has responded to same in order to ensure compliance with the applicable rules.

A. Introduction

Claims 1, 2, 11, 16, and 18 were presented for examination.

Claims 1, 2, 11, 16 and 18 were rejected.

B. Claims 1, 2, 11, 16 and 18 Rejected Under 35 U.S.C. § 103

Examiner rejected Claims 1, 2, 11, 16 and 18 under U.S.C. § 103(a) as being unpatentable over U.S. 2003/0211062 to Laden et al (Laden) in view of 5,997,889 to Durr et al ('889). Further, Examiner rejected claim 18 under U.S.C. § 103(a) as being unpatentable over KR 149428 (KR).

1. The Laden in View of '889 Reference

Examiner cites Laden as the primary reference in rejecting Claims 1, 2, 11, 16 and 18 and as the basis for supporting her finding of obviousness of the present invention. Very respectfully, it is now evident that Examiner can no longer satisfy the burden of maintaining an obviousness conclusion by citing the above references as prior art.

Examiner argues that Laden teaches Dead Sea Salts with granularity of 50 to 1000 microns used in concentration of 1 – 60%. Applicant respectfully disagrees. Laden does not teach Dead Sea Salts with granularity of 50 to 1000 microns nor does Laden teach Dead Sea Salts used in concentration of 1 – 60% in the provisional application 60/202,409 dated 05-08-2000. In fact, the Laden provisional application 60/202,409 dated May 8, 2000 does not teach granularity range for any of the Laden specified compounds. The first disclosure by Laden of what it specifies as a compound having granularity of 50 to 1000 microns used in concentration of 1 – 60% is in Laden's PCT/US01/14570 filed on May 7, 2001.

Until now, Applicant was unaware and had never been advised that it is possible to provide documentation related to actual product manufacture and other materials as evidence to prove that the present invention existed before a reference cited as prior art by Examiner. Applicant attaches

as exhibits, documentary evidence including manufacturing batch records to section 131 affidavits under 37 C.F.R. 1.31 swearing back as a reference that our invention entitled "Ultra Fine Dead Sea Mineral Compound and Method of Manufacture" was invented by the priority date February 2, 2001 and had already been reduced to practice on February 2, 2001. Thus, the priority date of the present invention is February 2, 2001 and precedes Laden.

Respectfully, Laden can no longer be considered prior art and can no longer be combined in view of '889 as prior art.

2. The KR Reference

In response to Applicant's argument that KR must be strictly construed for what is clearly and definitely disclosed and that KR fails to teach the limitations of claim 1, Examiner states that KR has been cited for claim 18 only, and that it does not require all the particulars of claim 1 hence the argument is moot. Examiner cites KR as a reference as prior art to counter it.

Applicant must respectfully disagree with Examiner's argument in regard to claim 18. "Therefore the argument that the composition claimed in KR is ____ {*See Note below} made up of ultra-fine uniform specific granularity size rather than of dead sea salts minerals mixed of mixed various particle sizes all within the claimed range of KR, is moot. While instant claims do not recite the actual particle size of the salts, the teachings of KR to include Dead Sea Salts or Bamboo Salts of particle size 0.1 to 5.0 mm together with the absence of any data showing unexpected results of the claimed sizes (claimed upper limit and not the actual size) provides the requisite motivation to one of an ordinary skill in the art at the time of the instant invention to choose the appropriate particle size so as to achieve the desired skin scrubbing effect because KR teaches the salts for scrubbing effect on skin without irritation and with a pleasant effect" {from 1st paragraph page 8 Examiner office action dated February 23, 2007}. Examiner's argument implies use of the range of salts found in KR only within a cosmetic composition in order to "achieve the desired skin scrubbing effect on skin without irritation and with a pleasant effect". However, the requirement of claim 18 in the instant invention is to teach the limitation of Processed Dead Sea minerals (salts) to be used as an ingredient in manufacturing cosmetic compositions for application to the skin, 100% of said processed Dead Sea minerals consisting of an ultra-fine uniform specific granularity of less than 1.0 mm size granularity. Applicant respectfully contends that there is nothing whatsoever in KR's

teachings that even suggests that one of ordinary skill in the art at the time of the instant invention would have first invented a method of processing, a processor and processed Dead Sea minerals (salts) to be used as an ingredient in manufacturing all Dead Sea minerals (salts) cosmetic compositions making these processed minerals available to any cosmetics manufacturer as found in the present invention. KR focuses only on an ingredient with a range between 0.1 and 5 mm particles implying native minerals including very large granule sizes and KR teaches a specific cosmetic composition that includes the specific native range containing very large granules up to 5 mm in size for use as confirmed several times by Examiner. KR teaches use of the specific native raw material compound with its specific native granularity range as a whole. Applicant carefully considered Examiner's contention that only an upper limit is claimed in present invention. The language of claim 18 implies a range of particulate that is 100% less than 1.0 mm. The processed Dead Sea minerals produced by Applicant are ready for shipment to industry or to be used in manufacturing Applicant's products in house. This is within Applicant's specification. In industry, the practice of providing the description of such a compound of inorganic minerals being less than a certain particle size is indeed an acceptable description. For an excellent example of such practice, Applicant respectfully requests that Examiner please refer again to the previously presented documentation of Dead Sea Works, Ltd. (DSW) which is serving industry customers in 60 countries and is a part of the fourth largest producer and supplier of chemical products. DSW describes raw material product grades in the exact same manner being less than or greater than a certain size. This is important. This description is clearly and quickly understood by manufacturers. The ability to guarantee a cosmetics manufacturer such a uniform compound with a size that is less than a certain number of millimeters or a millimeter for use in manufacturing consumer products or even in other industry presents the manufacturer with a tremendous immediate advantage to know that it is possible to manufacture a product with granules that will not be larger than a specific size, that will be of a uniform nature and will conform within the requirements for the manufacturing process enhancing ease of use, for research and development processes and for the final product efficacy determination. Applicant has commissioned an independent study to provide data showing unexpected results and unexpected advantage of Processed Dead Sea minerals to be used as an ingredient for use in manufacturing cosmetic compositions for application to the skin, 100% of said processed Dead Sea minerals consisting of an ultra-fine uniform specific granularity of less than 1.0 mm size granularity and kindly requests that this be taken into consideration by Examiner.

Applicant respectfully submits that claim 18 as presented, is independently allowable over the prior art cited by Examiner.

Accordingly, Applicant respectfully requests that Examiner withdraw the rejections to Claims 1, 2, 11, 16 and 18 under 35 U.S.C. § 103(a).

*{Note: it appears that the word not was omitted from the above indicated sentence in Examiner Office Action dated 02/23/07}

CONCLUSION

The Applicant requests a telephone call if there are any problems associated with this Response, as this Response is believed to put the case in condition for allowance.

At this time and in view of Applicant's amendments and arguments set forth above, it is respectfully submitted that all pending claims are allowable, and a Notice of Allowance is respectfully requested.

Respectfully submitted,

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By



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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited on the date shown below with the United States Postal Service, with sufficient postage as First Class Mail (37 CFR 1.8(a)) in an envelope addressed to Mail Stop: RESPONSE/FEE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, as follows:

Via First Class Mail

Dated: August 23, 2007



Morris Samelson